

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff,

V.

Civil Action No.: 15-cv-1312

**REPOSSESSION MANAGEMENT
SERVICES, LLC, d/b/a
RMS LLC, and
MICHAEL A. MYERS, an individual**

Defendants.

COMPLAINT

Plaintiff, **THOMAS E. PEREZ**, Secretary of Labor, United States Department of Labor, brings this action to enjoin Defendants, **REPOSSESSION MANAGEMENT SERVICES, LLC, d/b/a RMS LLC**, a Michigan limited liability company, and **MICHAEL A. MYERS**, an individual (hereinafter “Defendants”), from violating the provisions of sections 6, 7, 11, and 15 of the Fair Labor Standards Act of 1938, as Amended (29 U.S.C. § 201 et seq.) (hereinafter “the Act”), pursuant to section 17 of the Act; and to recover unpaid minimum wage and overtime compensation owing to Defendants’ employees together with an equal additional amount as liquidated damages, pursuant to section 16(c) of the Act.

I

Jurisdiction of this action is conferred upon the court by sections 16(c) and 17 of the Act and 28 U.S.C. § 1345.

II

(A) Defendant **REPOSSESSION MANAGEMENT SERVICES, LLC, d/b/a RMS LLC** is and, at all times hereinafter mentioned, was a Michigan limited liability company with an office and place of business located in 1890 Bristol Ave NW, Grand Rapids, MI 49504, within the jurisdiction of this Court, and at all times hereinafter mentioned, was engaged in repossessing tangible assets (e.g., automobiles, boats, equipment) for creditors as a result of delinquent debts and related activities.

(B) Defendant **MICHAEL A. MYERS** is and, at all times hereinafter mentioned, was the sole owner of the corporate defendant **REPOSSESSION MANAGEMENT SERVICES, LLC, d/b/a RMS LLC** and was engaged in business within Michigan at the address identified above in sub-paragraph II(A). Defendant **MICHAEL A. MYERS** acted directly or indirectly in the interest of the corporate defendant **REPOSSESSION MANAGEMENT SERVICES, LLC, d/b/a RMS LLC** in relation to its employees, including, but not limited to, responsibility for the pay and employment practices of the corporate Defendant and was an individual employer within the meaning of section 3(d) of the Act.

III

Defendant **REPOSSESSION MANAGEMENT SERVICES, LLC, d/b/a RMS LLC** is and, at all times hereinafter mentioned, was engaged in related activities performed through unified operation or common control for a common business purpose, and, at all times hereinafter mentioned, was an enterprise within the meaning of section 3(r) of the Act.

IV

Defendant **REPOSSESSION MANAGEMENT SERVICES, LLC, d/b/a RMS LLC** is and, at all times hereinafter mentioned, was an enterprise engaged in commerce or in the

production of goods for commerce within the meaning of section 3(s)(1)(A) of the Act, in that said enterprise at all times hereinafter mentioned had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that enterprise had an annual gross volume of sales made or business done of not less than \$500,000.

V

Defendants repeatedly violated the provisions of sections 6 and 15(a)(2) of the Act by paying employees wages at rates less than \$7.25 per hour in workweeks when said employees were engaged in commerce and in the production of goods for commerce or were employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, as aforesaid. The violations were the result of Defendants misclassifying employees as independent contractors and paying employees on a piece rate basis, failing to pay some employees entirely, and making unlawful deductions.

VI

Defendants repeatedly violated the provisions of sections 7 and 15(a)(2) of the Act by employing employees, who in workweeks were employed in an enterprise engaged in commerce, within the meaning of the Act, as aforesaid, for workweeks longer than 40 hours without compensating said employees for their employment in excess of 40 hours per week during such workweeks at rates not less than one and one-half times the regular rate at which they were employed. The violations were the result of Defendants failing to include commissions in calculating employees' hourly overtime rate, paying employees their regular hourly rate for overtime hours instead of the overtime rate, misclassifying employees as exempt, failing to pay

some employees entirely, making unlawful deductions, and misclassifying employees as independent contractors and paying employees on a piece rate basis.

VII

Defendants, employers subject to the provisions of the Act, repeatedly violated the provisions of sections 11 and 15(a)(5) of the Act in that they failed to make, keep, and preserve adequate and accurate records of employees and the wages, hours and other conditions and practices of employment maintained by them as prescribed by regulations duly issued pursuant to authority granted in the Act and found in 29 C.F.R. Part 516, in that records fail to show an actual record of hours worked by employees. Defendants also failed to document the ages of minor employees.

VIII

Since at least March 15, 2013, Defendants repeatedly violated the aforesaid provisions of the Act. A judgment which enjoins and restrains such violations and includes the restraint of any withholding of payment of unpaid minimum wage and overtime compensation found by the court to be due to present and former employees under the Act is expressly authorized by section 17 of the Act.

WHEREFORE, cause having been shown, Plaintiff prays for judgment against Defendants as follows:

(A) For an Order pursuant to section 17 of the Act, permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them from prospectively violating the Act;

(B) For an Order:

1. pursuant to section 16(c) of the Act, finding Defendants liable for unpaid minimum wage and overtime compensation due Defendants' employees and for liquidated damages equal in amount to the unpaid compensation found due their employees listed in the attached Exhibit A (additional back wages and liquidated damages may be owed to certain employees presently unknown to Plaintiff for the period covered by this Complaint); or, in the event liquidated damages are not awarded,

2. pursuant to section 17, enjoining and restraining the Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with Defendants, from withholding payment of unpaid minimum wage and overtime compensation found to be due their employees and pre-judgment interest computed at the underpayment rate established by the Secretary of the Treasury, pursuant to 26 U.S.C § 6621;

(C) For an Order awarding Plaintiff the costs of this action; and

(D) For an Order granting such other and further relief as may be necessary and appropriate.

Date: December 18, 2015

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

s/ Brooke E. Worden
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Trial Attorney

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